Nos. 86-71 & 86-97

IN THE

Supreme Court of the United States

OCTOBER TERM 1986

CTS CORPORATION,

Appellant,

v.

DYNAMICS CORPORATION OF AMERICA,

Appellee.

STATE OF INDIANA,

Intervenor-Appellant,

v.

DYNAMICS CORPORATION OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

APPENDIX TO MOTION OF APPELLEE DYNAMICS CORPORATION OF AMERICA TO AFFIRM

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SECTION 1. IC 23-1-17 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS:

Chapter 17. Construction and Application.

Sec. 1. This article shall be known and may be cited as the Indiana Business Corporation Law.

Sec. 2. The general assembly has power to amend or repeal all or part of this article at any time, and all domestic and foreign corporations subject to this article are governed by the amendment or repeal.

Sec. 3. (a) After July 31, 1987, this article applies to all domestic corporations in existence on July 31, 1987, that were incorporated under IC 23-1-1 through IC 23-1-12 or any other prior law. It also applies to all corporations incorporated under IC 23-1-21.

(b) Before August 1, 1987, the provisions of IC 23-1-18 through IC 23-1-54 do not apply to any domestic corporation, except in accordance with the following:

(1) The corporation's board of directors must adopt a resolution electing to have IC 23-1-18 through IC 23-1-54 (except for IC 23-1-18-3, IC 23-1-21, and IC 23-1-53-3) apply to the corporation.

(2) The resolution must specify a date (after March 31, 1986, and before August 1, 1987) on and after which those provisions will apply to the corporation.

(3) The resolution must be filed in the office of the secretary of state before the date specified under subdivision (2).

(c) The provisions of IC 23-1-18 through IC 23-1-54 (except for IC 23-1-18-3, IC 23-1-21, and IC 23-1-53-3) apply to each domestic corporation that complies with all the conditions prescribed by subsection (b). In addition, such a corporation shall continue to comply with the requirements of

IC 23-1-8 and IC 23-3-2 until August 1, 1987, but it is not subject to the provisions of IC 23-1-1 through IC 23-1-7, IC 23-1-9 through IC 23-1-12, and IC 23-3-1.

Sec. 4. After July 31, 1987, this article applies to all foreign corporations that want to transact business in Indiana. A foreign corporation authorized to transact business in Indiana on July 31, 1987, is subject to this article but is not required to obtain a new certificate of authority to transact business under this article.

Sec. 5. Official comments may be published by the general corporation law study commission (P.L.362-1985, as amended), and, after their publication, the comments may be consulted by the courts to determine the underlying reasons, purposes, and policies of this article and may be used as a guide in its construction and application.

SECTION 6. IC 23-1-22 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS:

Chapter 22. Powers and Purposes.

Sec. 1. (a) Every corporation incorporated under this article has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this article unless provisions for incorporation of corporations engaging in that business exist under that statute.

Sec. 2. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power to:

(1) sue and be sued, complain and defend in its corporate name;

(2) have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it (however, the use of a corporate seal or an impression thereof is not required and does not affect the validity of any instrument whatsoever, notwithstanding any other statutes);

(3) make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(4) purchase, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located;

(5) sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any entity, including itself, except as otherwise prohibited by this article;

(7) make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) conduct its business, locate offices and exercise the powers granted by this article within or without Indiana;

(11) elect directors, elect and appoint officers, and appoint employees and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) pay pensions and establish and administer pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, welfare plans, qualified and nonqualified retirement plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) transact any lawful business that will aid governmental policy; and

(15) make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

Sec. 3. (a) In anticipation of or during an emergency defined in subsection (d), the board of directors of a corporation may:

(1) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d), unless emergency bylaws provide otherwise:

(1) notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) one (1) or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(1) binds the corporation; and

(2) may not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if an extraordinary event prevents a quorum of the corporation's directors from assembling in time to deal with the business for which the meeting has been or is to be called.

Sec. 4. (a) In addition to any other provision contained in its articles of incorporation or bylaws or authorized by any other provision of this article, a corporation may establish one (1) or more procedures by which it regulates transactions that would, when consummated, result in a change of control of such corporation.

(b) For purposes of this section and any procedure established under this section, "control" means:

(1) for any corporation having one hundred (100) or more shareholders, the beneficial ownership, or the direct or indirect power to direct the voting, of no less than ten percent (10%) of the voting shares of a corporation's outstanding voting shares; and

(2) for any corporation having fewer than one hundred (100) shareholders, the beneficial ownership, or the direct or indirect power to direct the voting, of no less than fifty percent (50%) of the voting shares of the corporation's outstanding voting shares.

(c) A procedure established under this section may be adopted:

(1) in a corporation's original articles of incorporation or bylaws;

(2) by amending the articles of incorporation; or

(3) notwithstanding that a vote of the shareholders would otherwise be required by any other provision of this article or the articles of incorporation for the adoption or implementation of all or any portion of the procedure, by amending the bylaws.

Sec. 5. (a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

(1) in a proceeding by a shareholder against the corporation to enjoin the act;

(2) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) in a proceeding by the attorney general under IC 23-1-47-1.

(c) In a shareholder's proceeding under subsection (b)(1) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss

(other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.

SECTION 13. IC 23-1-29 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS:

Chapter 29. Meetings of Shareholders.

Sec. 1. (a) A corporation must hold a meeting of the shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings may be held in or out of Indiana at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(d) If the articles of incorporation or bylaws so provide, any or all shareholders may participate in an annual shareholders' meeting by, or through the use of, any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

Sec 2. (a) A corporation must hold a special meeting of shareholders:

(1) on call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) if the holders of at least twenty-five percent (25%) of all the votes entitled to be cast on any issue proposed to be

considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(b) If not otherwise fixed under section 7 of this chapter, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(c) Special shareholders' meetings may be held in or out of Indiana at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by section 5(c) of this chapter may be conducted at a special shareholders' meeting.

(e) If the articles of incorporation or bylaws so provide, any or all shareholders may participate in a special meeting of shareholders by, or through the use of, any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

Sec. 3. The circuit or superior court of the county where a corporation's principal office (or, if none in Indiana, its registered office) is located may order a meeting to be held and may fix the time and place of the meeting, which shall be conducted in accordance with the corporation's articles of incorporation and bylaws:

(1) on application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(2) on application of a shareholder who signed a demand for a special meeting valid under section 2 of this chapter if:

(A) notice of the special meeting was not given within sixty (60) days after the date the demand was delivered to the corporation's secretary; or

(B) the special meeting was not held in accordance with the notice.

Sec. 4. (a) Action required or permitted by this article to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one (1) or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise determined under section 7 of this chapter, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a).

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(d) If this article requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least ten (10) days before the action is taken. The notice must contain or be accompanied by the same material that, under this article, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

Sec. 5. (a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. Unless this article or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this article or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under section 7 of this chapter, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 7 of this chapter, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

Sec. 6. (a) A shareholder may waive any notice required by this article, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver by the shareholder entitled to the notice must be in writing and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(1) waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Sec. 7. (a) The bylaws may fix or provide the manner of fixing the record date for one (1) or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than seventy (70) days before the meeting or action requiring a determination of shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

SECTION 22. IC 23-1-38 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS:

Chapter 38. Amendment of Articles of Incorporation.

Sec. 1. (a) A corporation may amend its articles of incorporation at any time to add or change a provision that is

required or permitted to be in the articles of incorporation or to delete a provision not required to be in the articles of incorporation. Whether a provision is required or permitted to be in the articles of incorporation is determined as of the effective date of the amendment.

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, or authorized to be in the bylaws by this article or the articles of incorporation including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

Sec. 2. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one (1) or more amendments to the corporation's articles of incorporation without shareholder action to:

(1) extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) delete the names and addresses of the initial directors;

(3) delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;

(4) change each issued and unissued authorized share of an outstanding class into a greater number of whole shares or a lesser number of whole shares and fractional shares if the corporation has only shares of that class outstanding;

(5) change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name; or

(6) make any other change expressly permitted by this article to be made without shareholder action.

Sec. 3. (a) A corporation's board of directors may propose one (1) or more amendments to the articles of incorporation for submission to the shareholders.

(b) For the amendment to be adopted:

(1) the board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(2) the shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (e).

(c) The board of directors may condition its submission of the proposed amendment on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with IC 23-1-29-5. The notice of meeting must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy or summary of the amendment.

(e) Unless this article, the articles of incorporation, or the board of directors (acting under subsection (c)) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(1) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(2) the votes required by IC 23-1-30-6 and IC 23-1-30-7 by every other voting group entitled to vote on the amendment.

Sec. 4. (a) The holders of the outstanding shares of a class are entitled to vote as a separate voting group (if shareholder voting is otherwise required by this article) on a proposed amendment if the amendment would:

(1) increase or decrease the aggregate number of authorized shares of the class;

(2) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(3) effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(4) change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(5) change the shares of all or part of the class into a different number of shares of the same class;

(6) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(7) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(8) limit or deny an existing preemptive right of all or part of the shares of the class; or

(9) cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(b) If a proposed amendment would affect a series of a class of shares in one (1) or more of the ways described in subsection (a), the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles two (2) or more series of shares to vote as separate voting groups under this section would affect those two (2) or more series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

Sec. 5. If a corporation has not yet issued shares, its board of directors (or if a board of directors has not been selected, then the incorporators) may adopt one (1) or more amendments to the corporation's articles of incorporation.

Sec. 6. (a) A corporation amending its articles of incorporation shall deliver to the secretary of state for filing articles of amendment setting forth:

(1) the name of the corporation;

(2) the text of each amendment adopted;

(3) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) the date of each amendment's adoption;

(5) if an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required;

(6) if an amendment was approved by the shareholders:

(A) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group represented at the meeting;

(B) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

(b) If a corporation amends its articles of incorporation to change its corporate name, it may, after the amendment has become effective, file for record with the county recorder of each county in Indiana in which it has real property at the time the amendment becomes effective a file-stamped copy of the articles of amendment. The validity of a change in name is not affected by a corporation's failure to record the articles of amendment.

Sec. 7. (a) A corporation's board of directors or, if the board of directors has not been selected, the incorporators may restate its articles of incorporation at any time with or without shareholder action.

(b) The restatement may include one (1) or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in section 3 of this chapter.

(c) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with IC 23-1-29-5. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed restatement and must contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(d) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of

restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(1) whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or

(2) if the restatement contains an amendment to the articles requiring shareholder approval, the information required by section 6 of this chapter.

(e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(f) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (d).

Sec. 8. (a) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by IC 23-1-21-2.

(b) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(1) the name of the corporation;

(2) the text of each amendment approved by the court;

(3) the date of the court's order or decree approving the articles of amendment;

(4) the title of the reorganization proceeding in which the order or decree was entered; and

(5) a statement that the court had jurisdiction of the proceeding under federal statute.

(c) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as provided in the reorganization plan.

(d) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Sec. 9. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the preexisting rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

SECTION 26. IC 23-1-42 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS:

Chapter 42. Control Share Acquisitions.

Sec. 1. As used in this chapter, "control shares" means shares that, except for this chapter, would have voting power with respect to shares of an issuing public corporation that, when added to all other shares of the issuing public corporation owned by a person or in respect to which that person may exercise or direct the exercise of voting power, would entitle that person, immediately after acquisition of the shares (directly or indirectly, alone or as a part of a group), to exercise or direct the exercise of the voting power of the issuing public corporation in the election of directors within any of the following ranges of voting power:

(1) One-fifth (1/5) or more but less than one-third (1/3) of all voting power.

(2) One-third (1/3) or more but less than a majority of all voting power.

(3) A majority or more of all voting power.

Sec. 2. (a) As used in this chapter, "control share acquisition" means the acquisition (directly or indirectly) by any person of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares.

(b) For purposes of this section, shares acquired within ninety (90) days or shares acquired pursuant to a plan to make a control share acquisition are considered to have been acquired in the same acquisition.

(c) For purposes of this section, a person who acquires shares in the ordinary course of business for the benefit of others in good faith and not for the purpose of circumventing this chapter has voting power only of shares in respect of which that person would be able to exercise or direct the exercise of votes without further instruction from others.

(d) The acquisition of any shares of an issuing public corporation does not constitute a control share acquisition if the acquisition is consummated in any of the following circumstances:

(1) Before January 8, 1986.

(2) Pursuant to a contract existing before January 8, 1986.

(3) Pursuant to the laws of descent and distribution.

(4) Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this chapter.

(5) Pursuant to a merger or plan of share exchange effected in compliance with IC 23-1-40 if the issuing public corporation is a party to the agreement of merger or plan of share exchange.

(e) The acquisition of shares of an issuing public corporation in good faith and not for the purpose of circumventing this chapter by or from:

(1) any person whose voting rights had previously been authorized by shareholders in compliance with this chapter; or

(2) any person whose previous acquisition of shares of an issuing public corporation would have constituted a control share acquisition but for subsection (d);

does not constitute a control share acquisition, unless the acquisition entitles any person (directly or indirectly, alone or as a part of a group) to exercise or direct the exercise of voting power of the corporation in the election of directors in excess of the range of the voting power otherwise authorized.

Sec. 3. As used in this chapter, "interested shares" means the shares of an issuing public corporation in respect of which any of the following persons may exercise or direct the exercise of the voting power of the corporation in the election of directors:

(1) An acquiring person or member of a group with respect to a control share acquisition.

(2) Any officer of the issuing public corporation.

(3) Any employee of the issuing public corporation who is also a director of the corporation.

Sec. 4. (a) As used in this chapter, "issuing public corporation" means a corporation that has:

(1) one hundred (100) or more shareholders;

(2) its principal place of business, its principal office, or substantial assets within Indiana; and

(3) either:

(A) more than ten percent (10%) of its shareholders resident in Indiana;

(B) more than ten percent (10%) of its shares owned by Indiana residents; or

(C) ten thousand (10,000) shareholders resident in Indiana.

(b) The residence of a shareholder is presumed to be the address appearing in the records of the corporation.

(c) Shares held by banks (except as trustee or guardian), brokers or nominees shall be disregarded for purposes of calculating the percentages or numbers described in this section.

Sec. 5. Unless the corporation's articles of incorporation or bylaws provide that this chapter does not apply to control share acquisitions of shares of the corporation before the control share acquisition, control shares of an issuing public corporation acquired in a control share acquisition have only such voting rights as are conferred by section 9 of this chapter.

Sec. 6. Any person who proposes to make or has made a control share acquisition may at the person's election deliver an acquiring person statement to the issuing public corporation at the issuing public corporation's principal office. The acquiring person statement must set forth all of the following:

(1) The identity of the acquiring person and each other member of any group of which the person is a part for purposes of determining control shares.

(2) A statement that the acquiring person statement is given pursuant to this chapter.

(3) The number of shares of the issuing public corporation owned (directly or indirectly) by the acquiring person and each other member of the group.

(4) The range of voting power under which the control share acquisition falls or would, if consummated, fall.

(5) If the control share acquisition has not taken place:

(A) a description in reasonable detail of the terms of the proposed control share acquisition; and

(B) representations of the acquiring person, together with a statement in reasonable detail of the facts upon which they are based, that the proposed control share acquisition, if consummated, will not be contrary to law, and that the acquiring person has the financial capacity to make the proposed control share acquisition.

Sec. 7. (a) If the acquiring person so requests at the time of delivery of an acquiring person statement and gives an undertaking to pay the corporation's expenses of a special meeting, within ten (10) days thereafter, the directors of the issuing public corporation shall call a special meeting of shareholders of the issuing public corporation for the purpose of considering the voting rights to be accorded the shares acquired or to be acquired in the control share acquisition.

(b) Unless the acquiring person agrees in writing to another date, the special meeting of shareholders shall be held within fifty (50) days after receipt by the issuing public corporation of the request.

(c) If no request is made, the voting rights to be accorded the shares acquired in the control share acquisition shall be presented to the next special or annual meeting of shareholders.

(d) If the acquiring person so requests in writing at the time of delivery of the acquiring person statement, the special meeting must not be held sooner than thirty (30) days after receipt by the issuing public corporation of the acquiring person statement.

Sec. 8. (a) If a special meeting is requested, notice of the special meeting of shareholders shall be given as promptly as reasonably practicable by the issuing public corporation to all shareholders of record as of the record date set for the meeting, whether or not entitled to vote at the meeting.

(b) Notice of the special or annual shareholder meeting at which the voting rights are to be considered must include or be accompanied by both of the following:

(1) A copy of the acquiring person statement delivered to the issuing public corporation pursuant to this chapter.

(2) A statement by the board of directors of the corporation, authorized by its directors, of its position or recommendation, or that it is taking no position or making no recommendation, with respect to the proposed control share acquisition.

Sec. 9. (a) Control shares acquired in a control share acquisition have the same voting rights as were accorded the shares before the control share acquisition only to the extent granted by resolution approved by the shareholders of the issuing public corporation.

(b) To be approved under this section, the resolution must be approved by:

(1) each voting group entitled to vote separately on the proposal by a majority of all the votes entitled to be cast by that voting group, with the holders of the outstanding shares of a class being entitled to vote as a separate voting group if the proposed control share acquisition would, if fully carried out, result in any of the changes described in IC 23-1-38-4(a); and

(2) each voting group entitled to vote separately on the proposal by a majority of all the votes entitled to be cast by that group, excluding all interested shares.

Sec. 10. (a) If authorized in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, control shares acquired in a control share acquisition with respect to which no acquiring person statement has been filed with the issuing public corporation may, at any time during the period ending sixty (60) days after the last acquisition of control shares by the acquiring person, be subject to redemption by the corporation at the fair value thereof pursuant to the procedures adopted by the corporation.

(b) Control shares acquired in a control share acquisition are not subject to redemption after an acquiring person statement has been filed unless the shares are not accorded full voting rights by the shareholders as provided in section 9 of this chapter.

Sec. 11. (a) Unless otherwise provided in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, in the event control shares acquired in a control share acquisition are accorded full voting rights and the acquiring person has acquired control shares with a majority or more of all voting power, all shareholders of the issuing public corporation have dissenters' rights as provided in this chapter.

(b) As soon as practicable after such events have occurred, the board of directors shall cause a notice to be sent to all shareholders of the corporation advising them of the facts and that they have dissenters' rights to receive the fair value of their shares pursuant to IC 23-1-44.

(c) As used in this section, "fair value" means a value not less than the highest price paid per share by the acquiring person in the control share acquisition.

SECTION 27. IC 23-1-43 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS:

Chapter 43. Business Combinations.

Sec. 1. As used in this chapter, "affiliate" means a person that directly, or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with, a specified person.

Sec. 2. As used in this chapter, "announcement date", when used in reference to any business combination, means the date of the first public announcement of the final, definitive proposal for the business combination.

Sec. 3. As used in this chapter, "associate", when used to indicate a relationship with any person, means:

(1) any corporation or organization of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of voting shares;

(2) any trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity; and

(3) any relative or spouse of the person, or any relative of the spouse, who has the same home as the person.

Sec. 4. As used in this chapter, "beneficial owner", when used with respect to any shares, means a person that:

(1) individually or with or through any of its affiliates or associates, beneficially owns the shares (directly or indirectly);

(2) individually or with or through any of its affiliates or associates, has:

(A) the right to acquire the shares (whether the rignt is exercisable immediately or only after the passage of time) under any agreement, arrangement, or understanding (whether or not in writing), or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise (however, a person is not considered the beneficial owner of shares tendered under a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares are accepted for purchase or exchange); or

(B) the right to vote the shares under any agreement, arrangement, or understanding (whether or not in writing) (however, a person is not considered the beneficial owner of any shares under this clause if the

agreement, arrangement, or understanding to vote the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable regulations under the Exchange Act and is not then reportable on a Schedule 13D under the Exchange Act, or any comparable or successor report); or

(3) has any agreement, arrangement, or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except voting under a revocable proxy or consent as described in subdivision (2)(B)), or disposing of the shares with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the shares.

Sec. 5. As used in this chapter, "business combination", when used in reference to any resident domestic corporation and any interested shareholder of the resident domestic corporation, means any of the following:

(1) Any merger of the resident domestic corporation or any subsidiary of the resident domestic corporation with:

(A) the interested shareholder; or

(B) any other corporation (whether or not itself an interested shareholder of the resident domestic corporation) that is, or after the merger or consolidation would be, an affiliate or associate of the interested shareholder.

(2) Any sale, lease, exchange, mortgage, pledge, transfer, or other disposition (in one (1) transaction or a series or transactions) to or with the interested shareholder or any affiliate or associate of the interested shareholder of assets of the resident domestic corporation or any subsidiary of the resident domestic corporation:

(A) having an aggregate market value equal to ten percent (10%) or more of the aggregate market value of all the assets, determined on a consolidated basis, of the resident domestic corporation;

(B) having an aggregate market value equal to ten percent (10%) or more of the aggregate market value of all the outstanding shares of the resident domestic corporation; or

(C) representing ten percent (10%) or more of the earning power or net income, determined on a consolidated basis, of the resident domestic corporation.

(3) The issuance or transfer by the resident domestic corporation or any subsidiary of the resident domestic corporation (in one (1) transaction or a series of transactions) of any shares of the resident domestic corporation or any subsidiary of the resident domestic corporation that have an aggregate market value equal to five percent (5%) or more of the aggregate market value of all the outstanding shares of the resident domestic corporation to the interested shareholder or any affiliate or associate of the interested shareholder except under the exercise of warrants or rights to purchase shares offered, or a dividend or distribution paid or made, pro rata to all shareholders of the resident domestic corporation.

(4) The adoption of any plan or proposal for the liquidation or dissolution of the resident domestic corporation proposed by, or under any agreement, arrangement, or understanding (whether or not in writing) with, the interested shareholder or any affiliate or associate of the interested shareholder.

(5) Any:

(A) reclassification of securities (including without limitation any share split, share dividend, or other

distribution of shares in respect of shares, or any reverse share split);

(B) recapitalization of the resident domestic corporation;

(C) merger or consolidation of the resident domestic corporation with any subsidiary of the resident domestic corporation; or

(D) other transaction (whether or not with or into or otherwise involving the interested shareholder); proposed by, or under any agreement, arrangement, or understanding (whether or not in writing) with, the interested shareholder or any affiliate or associate of the interested shareholder, that has the effect (directly or indirectly) of increasing the proportionate share of the outstanding shares of any class or series of voting shares or securities convertible into voting shares of the resident domestic corporation or any subsidiary of the resident domestic corporation that is directly or indirectly owned by the interested shareholder or any affiliate or associate of the interested shareholder, except as a result of immaterial changes due to fractional share adjustments.

(6) Any receipt by the interested shareholder or any affiliate or associate of the interested shareholder of the benefit (directly or indirectly, except proportionately as a shareholder of the resident domestic corporation), of any loans, advances, guarantees, pledges, or other financial assistance or any tax credits or other tax advantages provided by or through the resident domestic corporation.

Sec. 6. As used in this chapter, "common stock" means any shares other than preferred shares.

Sec. 7. As used in this chapter, "consummation date", with respect to any business combination, means the date of consummation of the business combination or, in the case of a

business combination as to which a shareholder vote is taken, the later of:

(1) the business day before the vote; or

(2) twenty (20) days before the date of consummation of the business combination.

Sec. 8. (a) As used in this chapter, "control", including the terms "controlling", "controlled by", and "under common control with", means the possession (directly or indirectly) of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(b) A person's beneficial ownership of ten percent (10%) or more of the voting power of a corporation's outstanding voting shares creates a presumption that the person has control of the corporation.

(c) Notwithstanding subsections (a) and (b), a person is not considered to have control of a corporation if the person holds voting power, in good faith and not for the purpose of circumventing this chapter, as an agent, bank, broker, nominee, custodian, or trustee for one (1) or more beneficial owners who do not individually or as a group have control of the corporation.

Sec. 9. As used in this chapter, "Exchange Act" means the Act of Congress known as the Securities Exchange Act of 1934, as amended.

Sec. 10. (a) As used in this chapter, "interested shareholder", when used in reference to any resident domestic corporation, means any person (other than the resident domestic corporation or any subsidiary of the resident domestic corporation) that is:

(1) the beneficial owner, directly or indirectly, of ten percent (10%) or more of the voting power of the outstanding voting shares of the resident domestic corporation; or

(2) an affiliate or associate of the resident domestic corporation and at any time within the five (5) year period immediately before the date in question was the beneficial owner, directly or indirectly, of ten percent (10%) or more of the voting power of the then outstanding shares of the resident domestic corporation.

(b) For the purpose of determining whether a person is an interested shareholder, the number of voting shares of the resident domestic corporation considered to be outstanding includes shares considered to be beneficially owned by the person through application of section 4 of this chapter, but does not include any other unissued shares of voting shares of the resident domestic corporation that may be issuable under any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

Sec. 11. As used in this chapter, "market value", when used in reference to shares or property of any resident domestic corporation, means the following:

(1) In the case of shares, the highest closing sale price of a share during the thirty (30) day period immediately preceding the date in question on the composite tape for New York Stock Exchange listed shares, or, if the shares are not quoted on the composite tape or not listed on the New York Stock Exchange, on the principal United States securities exchange registered under the Exchange Act on which the shares are listed, or, if the shares are not listed on any such exchange, the highest closing bid quotation with respect to a share during the thirty (30) day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotation is available, the fair market value on the date in question of a share as determined by the board of directors of the resident domestic corporation in good faith.

(2) In the case of property other than cash or shares, the fair market value of the property on the date in question as determined by the board of directors of the resident domestic corporation in good faith.

Sec. 12. As used in this chapter, "preferred stock" means any class or series of shares of a resident domestic corporation that under the bylaws or articles of incorporation of the resident domestic corporation:

(1) is entitled to receive payment of dividends before any payment of dividends on some other class or series of shares; or

(2) is entitled in the event of any voluntary liquidation, dissolution, or winding up of the corporation to receive payment or distribution of a preferential amount before any payments or distributions are received by some other class or series of shares.

Sec. 13. (a) As used in this chapter, "resident domestic corporation" means a corporation that has one hundred (100) or more shareholders.

(b) A resident domestic corporation does not cease to be a resident domestic corporation by reason of events occurring or actions taken while the resident domestic corporation is subject to this chapter.

Sec. 14. As used in this chapter, "share" means:

(1) any share or similar security, any certificate of interest, any participation in any profit sharing agreement, any voting trust certificate, or any certificate of deposit for a share; and

(2) any security convertible, with or without consideration, into shares, or any warrant, call, or other option or privilege of buying shares without being bound to do so, or any other security carrying any right to acquire, subscribe to, or purchase shares.

Sec. 15. As used in this chapter, "share acquisition date", with respect to any person and any resident domestic corporation, means the date that the person first becomes an interested shareholder of the resident domestic corporation.

Sec. 16. As used in this chapter, "subsidiary" of any resident domestic corporation means any other corporation of which voting shares having a majority of the outstanding voting shares of the other corporation entitled to be cast are owned (directly or indirectly) by the resident domestic corporation.

Sec. 17. As used in this chapter, "voting shares" means shares of capital stock of a corporation entitled to vote generally in the election of directors.

Sec. 18. (a) Notwithstanding any other provision of this article (except sections 20 through 24 of this chapter), a resident domestic corporation may not engage in any business combination with any interested shareholder of the resident domestic corporation for a period of five (5) years following the interested shareholder's share acquisition date unless the business combination or the purchase of shares made by the interested shareholder on the interested shareholder's share acquisition date is approved by the board of directors of the resident domestic corporation before the interested shareholder's share acquisition date.

(b) If a good faith proposal regarding a business combination is made in writing to the board of directors of the resident domestic corporation, the board of directors shall respond, in writing, within thirty (30) days or such shorter period, if any, as may be required by the Exchange Act, setting forth its reasons for its decision regarding the proposal.

(c) If a good faith proposal to purchase shares is made in writing to the board of directors of the resident domestic corporation, the board of directors, unless it responds affirmatively in writing within thirty (30) days or such shorter period, if any, as may be required by the Exchange Act, is considered to have disapproved the share purchase.

Sec. 19. Notwithstanding any other provision of this article (except section 18 and 20 through 24 of this chapter), a resident domestic corporation may not engage at any time in any business combination with any interested shareholder of the resident domestic corporation other than a business combination meeting all requirements of the articles of incorporation of the domestic corporation and the requirements specified in any of the following:

(1) A business combination approved by the board of directors of the resident domestic corporation before the interested shareholder's share acquisition date, or as to which the purchase of shares made by the interested shareholder on the interested shareholder's share acquisition date had been approved by the board of directors of the resident domestic corporation before the interested shareholder's share acquisition date.

(2) A business combination approved by the affirmative vote of the holders of a majority of the outstanding voting shares not beneficially owned by the interested shareholder proposing the business combination, or any affiliate or associate of the interested shareholder proposing the business combination, at a meeting called for that purpose no earlier than five (5) years after the interested shareholder's share acquisition date.

(3) A business combination that meets all of the following conditions:

(A) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of common stock of the resident domestic corporation in the business combination is at least equal to the higher of the following:

(i) The highest per share price paid by the interested shareholder, at a time when the inter-

ested shareholder was the beneficial owner (directly or indirectly) of five percent (5%) or more of the outstanding voting shares of the resident domestic corporation, for any shares of common stock of the same class or series acquired by it within the five (5) year period immediately before the announcement date with respect to the business combination or within the five (5) year period immediately before, or in, the transaction in which the interested shareholder became an interested shareholder, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one (1) year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common stock since the earliest date, up to the amount of the interest.

(ii) The market value per share of common stock on the announcement date with respect to the business combination or on the interested shareholder's share acquisition date, whichever is higher; plus interest compounded annually from that date through the consummation date at the rate for one (1) year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common stock since that date, up to the amount of the interest.

(B) The aggregate amount of the cash and the market value as of the consummation date of consideration

other than cash to be received per share by holders of outstanding shares of any class or series of shares, other than common stock, of the resident domestic corporation is at least equal to the highest of the following (whether or not the interested shareholder has previously acquired any shares of the class or series of shares):

(i) The highest per share price paid by the interested shareholder, at a time when the interested shareholder was the beneficial owner (directly or indirectly) of five percent (5%) or more of the outstanding voting shares of the resident domestic corporation, for any shares of the class or series of shares acquired by it within the five (5) year period immediately before the announcement date with respect to the business combination or within the five (5) year period immediately before, or in, the transaction in which the interested shareholder became an interested shareholder, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one (1) year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the class or series of shares since the earliest date, up to the amount of the interest.

(ii) The highest preferential amount per share to which the holders of shares of the class or series of shares are entitled in the event of any voluntary liquidation, dissolution, or winding up of the resident domestic corporation, plus the aggregate

amount of any dividends declared or due as to which the holders are entitled before payment of dividends on some other class or series of shares (unless the aggregate amount of the dividends is included in the preferential amount).

(iii) The market value per share of the class or series of shares on the announcement date with respect to the business combination or on the interested shareholder's share acquisition date, whichever is higher; plus interest compounded annually from that date through the consummation date at the rate for one (1) year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the class or series of shares since that date, up to the amount of the interest.

(C) The consideration to be received by holders of a particular class or series of outstanding shares (including common stock) of the resident domestic corporation in the business combination is in cash or in the same form as the interested shareholder has used to acquire the largest number of shares of the class or series of shares previously acquired by it, and the consideration shall be distributed promptly.

(D) The holders of all outstanding shares of the resident domestic corporation not beneficially owned by the interested shareholder immediately before the consummation of the business combination are entitled to receive in the business combination cash or other consideration for the shares in compliance with clauses (A), (B), and (C).

(E) After the interested shareholder's share acquisition date and before the consummation date with respect to the business combination, the interested shareholder has not become the beneficial owner of any additional voting shares of the resident domestic corporation except:

(i) as part of the transaction that resulted in the interested shareholder becoming an interested shareholder;

(ii) by virtue of proportionate share splits, share dividends, or other distributions of shares in respect of shares not constituting a business combination under section 5(5) of this chapter;

(iii) through a business combination meeting all of the conditions of section 18 of this chapter and this section; or

(iv) through purchase by the interested shareholder at any price that, if the price had been paid in an otherwise permissible business combination the announcement date and consummation date of which were the date of the purchase, would have satisfied the requirements of clauses (A), (B), and (C).

Sec. 20. This chapter does not apply to any business combination of a resident domestic corporation that does not, as of the share acquisition date, have a class of voting shares registered with the Securities and Exchange Commission under Section 12 of the Exchange Act, unless the corporation's articles of incorporation provide otherwise.

Sec. 21. This chapter does not apply to any business combination of a resident domestic corporation the articles of incorporation of which have been amended to provide that the resident domestic corporation is subject to this chapter and that has not had a class of voting shares registered with the

Securities and Exchange Commission under Section 12 of the Exchange Act on the effective date of the amendment, and that is a business combination with an interested shareholder whose share acquisition date is before the effective date of the amendment.

Sec. 22. This chapter does not apply to any business combination of a resident domestic corporation:

(1) the original articles of incorporation of which contain a provision expressly electing not to be governed by this chapter;

(2) that, before the earlier of:

(A) September 1, 1987; or

(B) thirty (30) days after the date specified by a resolution of the board of directors adopted under IC 23-1-17-3(b), if the board of directors adopts such a resolution;

adopts an amendment to the resident domestic corporation's bylaws expressly electing not to be governed by this chapter; however, an election under this subdivision may be rescinded by subsequent amendment of the bylaws; or

(3) that adopts an amendment to the resident domestic corporation's articles of incorporation, approved by the affirmative vote of the holders, other than interested shareholders and their affiliates and associates, of a majority of the outstanding voting shares of the resident domestic corporation, excluding the voting shares of interested shareholders and their affiliates and associates, expressly electing not to be governed by this chapter, if the amendment to the articles of incorporation is not to be effective until eighteen (18) months after the vote of the resident domestic corporation's shareholders and does not apply to any business combination of the resident domestic corpo-

ration with an interested shareholder whose share acquisition date is on or before the effective date of the amendment.

Sec. 23. This chapter does not apply to any business combination of a resident domestic corporation with an interested shareholder of the resident domestic corporation who became an interested shareholder inadvertently, if the interested shareholder:

(1) as soon as practicable, divests itself of a sufficient amount of the voting shares of the corporation so that it no longer is the beneficial owner (directly or indirectly) of ten percent (10%) or more of the outstanding voting shares of the resident domestic corporation; and

(2) would not at any time within the five (5) year period preceding the announcement date with respect to the business combination have been an interested shareholder but for the inadvertent acquisition.

Sec. 24. This chapter does not apply to any business combination with an interested shareholder who was an interested shareholder on January 7, 1986.

SECTION 28. IC 23-1-44 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS:

Chapter 44. Dissenters' Rights.

Sec. 1. As used in this chapter, "corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

Sec. 2. As used in this chapter, "dissenter" means a shareholder who is entitled to dissent from corporate action under section 8 of this chapter and who exercises that right when and in the manner required by sections 10 through 18 of this chapter.

Sec. 3. As used in this chapter, "fair value", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

Sec. 4. As used in this chapter, "interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

Sec. 5. As used in this chapter, "record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent that treatment as a record shareholder is provided under a recognition procedure or a disclosure procedure established under IC 23-1-30-4.

Sec. 6. As used in this chapter, "beneficial shareholder" means the person who is a beneficial owner of shares held by a nominee as the record shareholder.

Sec. 7. As used in this chapter, "shareholder" means the record shareholder or the beneficial shareholder.

Sec. 8. (a) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation is a party if:

(A) shareholder approval is required for the merger by IC 23-1-40-3 or the articles of incorporation; and

(B) the shareholder is entitled to vote on the merger.

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares

will be acquired, if the shareholder is entitled to vote on the plan.

(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one (1) year after the date of sale.

(4) The approval of a control share acquisition under IC 23-1-42.

(5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(b) This section does not apply to the holders of shares of any class or series if, on the date fixed to determine the shareholders entitled to receive notice of and vote at the meeting of shareholders at which the merger, plan of share exchange, or sale or exchange of property is to be acted on, the shares of that class or series were:

(1) registered on a United States securities exchange registered under the Exchange Act (as defined in IC 23-1-43-9); or

(2) traded on the National Association of Securities Dealers, Inc. Automated Quotations System Over-the-Counter Markets—National Market Issues or a similar market.

(c) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not chal-

lenge the corporate action creating the shareholder's entitlement.

Sec. 9. (a) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in the shareholder's name only if the shareholder dissents with respect to all shares beneficially owned by any one (1) person and notifies the corporation in writing of the name and address of each person on whose behalf the shareholder asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which the shareholder dissents and the shareholder's other shares were registered in the names of different shareholders.

(b) A beneficial shareholder may assert dissenters' rights as to shares held on the shareholder's behalf only if:

(1) the beneficial shareholder submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(2) the beneficial shareholder does so with respect to all the beneficial shareholder's shares or those shares over which the beneficial shareholder has power to direct the vote.

Sec. 10. (a) If proposed corporate action creating dissenters' rights under section 8 of this chapter is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

(b) If corporate action creating dissenters' rights under section 8 of this chapter is taken without a vote of shareholders, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in section 12 of this chapter.

Sec. 11. (a) If proposed corporate action creating dissenters' rights under section 8 of this chapter is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:

(1) must deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed action is effectuated; and

(2) must not vote the shareholder's shares in favor of the proposed action.

(b) A shareholder who does not satisfy the requirements of subsection (a) is not entitled to payment for the shareholder's shares under this chapter.

Sec. 12. (a) If proposed corporate action creating dissenters' rights under section 8 of this chapter is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of section 11 of this chapter.

(b) The dissenters' notice must be sent no later than ten (10) days after approval by the shareholders, or if corporate action is taken without approval by the shareholders, then ten (10) days after the corporate action was taken. The dissenters' notice must:

(1) state where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(2) inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(3) supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(4) set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty (30) nor more than sixty (60) days after the date the subsection (a) notice is delivered; and

(5) be accompanied by a copy of this chapter.

Sec. 13. (a) A shareholder sent a dissenters' notice described in IC 23-1-42-11 or in section 12 of this chapter must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the dissenter's notice under section 12(b)(3) of this chapter, and deposit the shareholder's certificates in accordance with the terms of the notice.

(b) The shareholder who demands payment and deposits the shareholder's shares under subsection (a) retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

(c) A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for the shareholder's shares under this chapter and is considered, for purposes of this article, to have voted the shareholder's shares in favor of the proposed corporate action.

Sec. 14. (a) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under section 16 of this chapter.

(b) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

Sec. 15. (a) Except as provided in section 17 of this chapter, as soon as the proposed corporate action is taken, or, if the transaction did not need shareholder approval and has been completed, upon receipt of a payment demand, the corporation shall pay each dissenter who complied with section 13 of this chapter the amount the corporation estimates to be the fair value of the dissenter's shares.

(b) The payment must be accompanied by:

(1) the corporation's balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(2) a statement of the corporation's estimate of the fair value of the shares;

(3) a statement of the dissenter's right to demand payment under section 18 of this chapter; and

(4) a copy of this chapter.

Sec. 16. (a) If the corporation does not take the proposed action within sixty (60) days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(b) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under section 12 of this chapter and repeat the payment demand procedure.

Sec. 17. (a) A corporation may elect to withhold payment required by section 15 of this chapter from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(b) To the extent the corporation elects to withhold payment under subsection (a), after taking the proposed corporate action, it shall estimate the fair value of the shares and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares and a statement of the dissenter's right to demand payment under section 18 of this chapter.

Sec. 18. (a) A dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and demand payment of the dissenter's estimate (less any payment under section 15 of this chapter), or reject the corporation's offer under section 17 of this chapter and demand payment of the fair value of the dissenter's shares, if:

(1) the dissenter believes that the amount paid under section 15 of this chapter or offered under section 17 of this chapter is less than the fair value of the dissenter's shares;

(2) the corporation fails to make payment under section 15 of this chapter within sixty (60) days after the date set for demanding payment; or

(3) the corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty (60) days after the date set for demanding payment.

(b) A dissenter waives the right to demand payment under this section unless the dissenter notifies the corporation of the

dissenter's demand in writing under subsection (a) within thirty (30) days after the corporation made or offered payment for the dissenter's shares.

Sec. 19. (a) If a demand for payment under IC 23-1-42-11 or under section 18 of this chapter remains unsettled, the corporation shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the shares. If the corporation does not commence the proceeding within the sixty (60) day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(b) The corporation shall commence the proceeding in the circuit or superior court of the county where a corporation's principal office (or, if none in Indiana, its registered office) is located. If the corporation is a foreign corporation without a registered office in Indiana, it shall commence the proceeding in the county in Indiana where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(c) The corporation shall make all dissenters (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one (1) or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(e) Each dissenter made a party to the proceeding is entitled to judgment:

(1) for the amount, if any, by which the court finds the fair value of the dissenter's shares, plus interest, exceeds the amount paid by the corporation; or

(2) for the fair value, plus accrued interest, of the dissenter's after-acquired shares for which the corporation elected to withhold payment under section 17 of this chapter.

Sec. 20. (a) The court in an appraisal proceeding commenced under section 19 of this chapter shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against such parties and in such amounts as the court finds equitable.

(b) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(1) against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of sections 10 through 18 of this chapter; or

(2) against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DYNAMICS CORPORATION OF AMERICA,

Plaintiff,

v.

CTS CORPORATION, et al.,

Defendants.

CTS CORPORATION,

Defendant and Counterplaintiff,

v.

DYNAMICS CORPORATION OF AMERICA,

Plaintiff and Counterdefendant,

and

ANDREW LOZYNIAK, EDWARD J. MOONEY, HENRY V. KENSING, PATRICK J. DORME, FRANK A. GUNTHER, CURTIS T. ROFF, SAUL SPERBER, JOSEPH P. WALKER and HAROLD COHAN,

Additional Counterdefendants.

No. 86 C 1624
Judge Getzendanner

CTS CORPORATION'S BRIEF IN OPPOSITION TO PLAINTIFF'S REQUEST FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST ENFORCEMENT OF THE CONTROL SHARE ACQUISITION PROVISIONS OF THE INDIANA BUSINESS CORPORATION LAW

before the control share acquisition only to the extent granted by resolution approved by the shareholders of the issuing public corporation." Before control shares are purchased, the acquiring party may (at its option) cause a special shareholder meeting to be called for the purpose of determining the voting rights of shares to be acquired in an anticipated control share acquisition. IND. CODE §§23-1-42-6, 23-1-42-7. In this case, DCA has not sought such a pre-purchase shareholder vote; thus, CTS' shareholders will decide the voting rights of DCA's control shares (if acquired) at the "next special or annual meeting of shareholders." IND. CODE §23-1-42-7(c).[3]

A resolution conferring voting rights on DCA's control shares must be approved by a majority of CTS' voting shares, excluding all interested shares. IND. CODE §23-1-42-9(b)(2). DCA's shares of CTS, as well as the shares owned by CTS' management, are within the set of "interested shares" excluded from the vote. IND. CODE §23-1-42-3. In short, before DCA's newly acquired control shares may be used to gain control of CTS' Board of Directors, DCA's control shares must be granted voting rights by a majority vote of all disinterested shares.

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[3] Practical and legal barriers prevent a shareholder vote on DCA's control shares at the scheduled April 25, 1986, annual meeting of CTS' shareholders. If DCA acquires control shares, which is far from inevitable in light of the Shareholders Rights Plan adopted by CTS' Board of Directors, a special shareholder meeting for the purpose of deciding the voting rights of those control shares will have to be called.

03/31 CTS CORP.—BUSINESS SALE—2—(DJ)

ELKHART, IND. —DJ— CTS CORP., WHICH SAID IT COMPLETED THE SALE OF ITS METAL STORE FIXTURES BUSINESS TO SYNDICATE SYSTEMS INC., FOR ABOUT $28 MILLION AND WILL POST A GAIN OF $7 MILLION OR $1.25 A SHARE IN THE FIRST QUARTER FROM THE SALE, HAD YEAR-AGO FIRST QUARTER NET OF $5.9 MILLION OR $1.02 A SHARE.

SEPARATELY, THE COMPANY SAID IT HAS ELECTED TO BE GOVERNED BY THE NEW INDIANA BUSINESS CORPORATION ACT. THE COMPANY SAID, AMONG OTHER CHANGES, THE NEW ACT PROVIDES THAT THE ACQUISITION OF OVER 20 PC OF THE OUTSTANDING SHARES OF THE COMPANY, SUBJECT TO THE ACT, WILL BE A "CONTROL SHARE ACQUISITION". CTS SAID SHARES ACQUIRED IN A CONTROL SHARE ACQUISITION CANNOT BE VOTED UNTIL HOLDERS OF A MAJORITY OF THE SHARES NOT OWNED BY THE ACQUIROR AND OFFICERS OF THE COMPANY GRANT VOTING RIGHTS TO THE PURCHASER. CTS SAID IT FILED SUIT IN STATE COURT IN INDIANA, SEEKING A DECLARATION THAT THE CONTROL SHARE ACQUISITION PROVISIONS OF THE ACT ARE VALID AND ENFORCEABLE.

AS REPORTED, DYNAMICS CORP. OF AMERICA, WHICH PRESENTLY OWNS 554,600 SHARES OF CTS, RECENTLY BEGAN A PARTIAL TENDER OFFER TO BUY UP TO AN ADDITIONAL ONE MILLION SHARES OF CTS AT $43 EACH. CTS SAID IF DYNAMICS BUYS MORE THAN 575,000 SHARES UNDER THIS OFFER, THE PURCHASE WOULD BE DEFINED AS A CONTROL SHARE ACQUISITION UNDER THE ACT.

CTS ALSO SAID IT FILED A COUNTERCLAIM AGAINST DYNAMICS AND ITS DIRECTORS IN THE CASE PENDING IN FEDERAL COURT IN CHICAGO BETWEEN THE TWO COMPANIES.

CERTIFIED RESOLUTION OF THE BOARD OF DIRECTORS OF CTS CORPORATION

The undersigned officers of CTS Corporation (the "Corporation"), existing pursuant to the provisions of The Indiana General Corporation Act, as amended, desiring to give notice of corporate action effectuating application of the Indiana Business Corporation Law (except for certain provisions thereof), hereby certify that the following resolutions were duly adopted by the Board of Directors of the Corporation at a meeting thereof, duly called, constituted and held on March 27, 1986, at which a quorum of such Board of Directors were present; have not been amended or rescinded; and are in full force and effect:

RESOLVED, That, pursuant to the procedure established in IC 23-1-17-3(b), the Board of Directors elects to have the provisions of IC 23-1-18 through IC 23-1-54 (except for IC 23-1-18-3, IC 23-1-21 and IC 23-1-53-3) apply to the Corporation on and after April 1, 1986; and

RESOLVED FURTHER, That the officers of the corporation be, and the same hereby are, authorized and directed to file a certified copy of this resolution in the Office of the Secretary of State of the State of Indiana before April 1, 1986.

IN WITNESS WHEREOF, the undersigned officers execute this Certified Resolution of the Board of Directors of the Corporation, and certify to the truth of the facts herein stated, this 27th day of March, 1986.

GARY B. EREKSON	JEANNINE M. DAVIS
Gary B. Erekson	Jeannine M. Davis
Senior Vice President and Chief Financial Officer	Secretary and General Counsel

STATE OF INDIANA
COUNTY OF ELKHART } SS.:

I, the undersigned, a Notary Public duly commissioned to take acknowledgments and administer oaths in the State of Indiana, certify that Gary B. Erekson, Senior Vice President and Chief Financial Officer, and Jeannine M. Davis, Secretary and General Counsel, of the Corporation, the officers executing the foregoing Certified Resolution of the Board of Directors of the Corporation, personally appeared before me, acknowledged the execution thereof, and swore or attested to the truth of the facts therein stated.

WITNESS my hand and Notarial Seal this 27th day of March, 1986.

CONSTANCE P. POLLITT

Notary Public

CONSTANCE P. POLLITT

Printed Name

FILED MAR. 27, 1986

My Commission Expires: September 19, 1986

My County of Residence: Elkhart County

STATE OF INDIANA

OFFICE OF THE SECRETARY OF STATE

To Whom These Presents Come, Greeting:

WHEREAS, there has been presented to me at this office a Resolution of the Board of Directors electing to be governed by the provisions of the Indiana Business Corporation Law prior to August 1, 1987 of CTS CORPORATION and said Resolution having been prepared and signed in accordance with the provisions of the Indiana Business Corporation Law.

WHEREAS, upon due examination, I find that it satisfies the requirements of I.C. 23-1-17-3(b) and I.C. 23-1-18-1:

NOW, THEREFORE, I, EDWIN J. SIMCOX, Secretary of State of Indiana, hereby certify that I have this day filed the Resolution of the Board of Directors in this office.

Effective date the provisions will apply is April 1, 1986.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this 27th day of March, 1986

_____

EDWIN J. SIMCOX
Secretary of State,

[Notary Seal]

By_____
Deputy

CERTIFIED RESOLUTION OF THE BOARD OF DIRECTORS OF CTS CORPORATION

The undersigned officers of CTS Corporation (the "Corporation"), existing pursuant to the provisions of The Indiana General Corporation Act, as amended, desiring to give notice of corporate action effectuating application of the Indiana Business Corporation Law (except for certain provisions thereof), hereby certify that the following resolutions were duly adopted by the Board of Directors of the Corporation at a meeting thereof, duly called, constituted and held on March 27, 1986, at which a quorum of such Board of Directors were present; have not been amended or rescinded; and are in full force and effect:

RESOLVED, That, pursuant to the procedure established in IC 23-1-17-3(b), the Board of Directors elects to have the provisions of IC 23-1-18 through IC 23-1-54 (except for IC 23-1-18-3, IC 23-1-21 and IC 23-1-53-3) apply to the Corporation on and after April 1, 1986; or as soon as possible after April 1, 1986, but in no event later than April 2, 1986; and

RESOLVED FURTHER, That the officers of the Corporation be, and the same hereby are, authorized and directed to file a certified copy of this resolution in the Office of the Secretary of State of the State of Indiana on April 1, 1986.

IN WITNESS WHEREOF, the undersigned officers execute this Certified Resolution of the Board of Directors of the Corporation, and certify to the truth of the facts herein stated this 27th day of March, 1986.

GARY B. EREKSON	JEANNINE M. DAVIS
Gary B. Erekson Senior Vice President and Chief Financial Officer	Jeannine M. Davis Secretary and General Counsel

STATE OF INDIANA
COUNTY OF ELKHART } ss.:

I, the undersigned, a Notary Public duly commissioned to take acknowledgments and administer oaths in the State of Indiana, certify that Gary B. Erekson, Senior Vice President and Chief Financial Officer, and Jeannine M. Davis, Secretary and General Counsel, of the Corporation, the officers executing the foregoing Certified Resolution of the Board of Directors of the Corporation, personally appeared before me, acknowledged the execution thereof, and swore or attested to the truth of the facts therein stated.

WITNESS my hand and Notarial Seal this 27th day of March, 1986.

CONSTANCE P. POLLITT
Notary Public

CONSTANCE P. POLLITT
Printed Name

FILED APR. 1, 1986

My Commission Expires: September 19, 1988

My County of Residence: Elkhart County

STATE OF INDIANA

OFFICE OF THE SECRETARY OF STATE

To Whom These Presents Come, Greeting:

WHEREAS, there has been presented to me at this office a Resolution of the Board of Directors electing to be governed by the provisions of the Indiana Business Corporation Law prior to August 1, 1987 of CTS CORPORATION and said Resolution has been prepared and signed in accordance with the provisions of the Indiana Business Corporation Law.

WHEREAS, upon due examination, I find that it satisfies the requirements of I.C. 23-1-17-3(b) and I.C. 23-1-18-1:

NOW, THEREFORE, I, EDWIN J. SIMCOX, Secretary of State of Indiana, hereby certify that I have this day filed the Resolution of the Board of Directors in this office.

Effective date the provisions will apply is April 1, 1986.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this 1st day of April, 1986

_____

EDWIN J. SIMCOX
Secretary of State,

[Notary Seal]

By_____
Deputy

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DYNAMICS CORPORATION OF AMERICA, *Plaintiff,*	DOCKET NO. 86 C 1624
vs.	
CTS CORPORATION, et al., *Defendants.*	Chicago, Illinois March 28, 1986 9:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE MILTON I. SHADUR, JUDGE

APPEARANCES:

For the Plaintiff:

MR. LOWELL E. SACHNOFF
30 South Wacker Drive, Suite 2900
Chicago, Illinois 60606

For the Defendant:

MR. STEPHEN C. SANDELS
111 West Monroe Street
Chicago, Illinois 60603

JESSE ANDREWS
Official Court Reporter—U.S. District Court
219 S. Dearborn Street
Chicago, Illinois 60604
(312) 922-5955

that is so consistent with the Williams Act and the Federal Regulation, there can not be any clearly excessive burden on Interstate Commerce in relation to local benefits.

The MITE case itself and the Securities Exchange Act of 1934, come right out and say that protecting local investors is plainly a legitimate state objective. The Securities Exchange Act states, I believe in Section 28 — it is cited on page 10 of our brief that this— that the Exchange Act is not intended to take away the regulatory powers of the authorities of State Securities Acts and State Commissioners.

THE COURT: Isn't that odd that the Indiana whatever they call it I guess they don't call it the General Assembly — the Indiana Legislature didn't talk about investors at all?

MR. SANDELS: You mean Indiana shareholders.

THE COURT: Yes.

MR. SANDELS: Let me speak to that if I may.

THE COURT: Yes.

MR. SANDELS: CTS does have about one third of its shareholders in the State of Indiana.

THE COURT: Yes I understand. I am talking about simply because their attack has been a facial attack. And, I know what you saying about standing. But you know facial attacks — Graynet (phonetically) against the City of Rockford and all that whole string of cases deal with the proposition

March 1986 Volume Three, No. 3

A report on current contests for corporate control

CORPORATE CONTROL ALERT

A publication of The American Lawyer

LEGAL DEVELOPMENTS

NEW YORK TAKEOVER STATUTE'S FIRST PROGENY

In December, when the New York legislature passed Governor Mario Cuomo's unique antitakeover legislation, several securities industry representatives predicted that other states would follow New York's lead and adopt similar statutes. It is too early to tell whether their predictions of an onslaught will prove to be correct, but Indiana has already chosen the New York approach. Also, Edward Reinfurt, vice-president of The Business Council of New York State, the principal business lobby in Albany and a strong supporter of the New York law, says that several other states have similar legislation under study.

The approach of the New York statute, which is viewed as a substantial deterrent to hostile takeovers, is to force potential acquirers of New York companies to gain the approval of the target's board before acquiring a significant stake in the company — 20% in the case of New York's law. Any acquirer that fails to get the required approval cannot do a merger, liquidate the target, acquire assets from the target, or do certain other specified transactions for five years. After five years, any contemplated transaction with the 20% holder has to be approved by holders of a majority of the outstanding shares, other than the larger holder, or meet certain fair price provisions set forth in the statute.

The statute adopted by the Indiana legislature — and awaiting the governor's signature — is substantially similar to the New York statute except that Indiana's ownership threshold is 10%. The purpose of the statute, says Paul Corsaro, a corporate specialist from Indianapolis's Bingham Summers Welsh & Spilman, is to "make it very, very difficult to take over an Indiana company."

When asked why Indiana had decided to adopt such a virulent statute, James Strain, an Indianapolis corporate lawyer from Barnes & Thornburg, says, "We don't like having all our companies taken over by East Coast firms." On further reflection, Strain says Midwestern and West Coast acquirers are no better.

In the past year, two large Indiana public companies, Hook Drugs, Inc., and Central Soya Company, Inc., were the targets of takeover bids. Hook agreed to merge with The Kroger Co. to avoid a takeover by Rite Aid Corporation, and Central Soya reached an accommodation with bidder Shamrock Holdings Inc., a private investment company owned by the Roy Disney family. There are other large public Indiana companies, including Amoco Corporation, Cummins Engine Company, Inc., and Eli Lilly and Company, that would benefit from the protection of the statute.

An Indiana lawyer familiar with the process says that the Indiana business community supported the legislation with varying degrees of enthusiasm but did not formally lobby for its passage. The impetus came primarily from the committee of Indiana lawyers appointed by the secretary of state that proposed the statute and the legislators themselves who strongly supported it. No dissenting votes were cast in either house of the legislature.

March 1986

Volume Three, No. 4 April 1986

A report on current contests for corporate control

CORPORATE CONTROL ALERT

A publication of The American Lawyer

STRATEGIES

1985—RECORD-BREAKING YEAR

The installation of a new computer system at W.T. Grimm & Co. kept the Chicago-based compiler of M&A data from disseminating its regular quarterly reports on takeover activity as 1985 progressed. So through the year, takeover lawyers and bankers had to rely on their intuition and deposit slips to tell them that 1985 was a record-breaking year. Now Grimm's new data processing system is up and running: it has finally digested the staggering quantity of data the M&A community has dished up, and the results, though not unexpected, are mind-boggling nonetheless. Here are some of the details.

In 1985, Grimm counted 3,001 transactions announced and completed or pending as of December 31, 1985. To be included in Grimm's statistics, says Tomislava Simic, Grimm's vice-president — research, a deal must have at least one U.S. party and a purchase price of $500,000 or more, and involve a formal transfer of ownership involving 10% or more of a company's equity or assets. The transactions counted include mergers, acquisitions, LBOs, and divestitures, but not open market purchases of stock. In 1985, the total purchase price of those deals was a record-breaking $179.6 billion, up 47% from 1984's $122.2 billion. Thirty-six of those deals, totaling $92.7 billion, exceeded the billion-dollar mark. That is twice the then-considered astounding 18 billion-dollar-plus deals announced in 1984. Those 36 deals totaled more than half the total value of all the 1985 deals.

In 1984, the billion-dollar deals were concentrated in the oil industry. Included were Standard Oil Company of Califor-

nia's $13.2 billion purchase of Gulf Oil Corporation; Texaco Inc.'s $10.1 billion purchase of Getty Oil Corp.; and Mobil Corporation's $5.7 billion purchase of Superior Oil Company. In 1985, the billion-dollar deals covered a wide range of industries, including broadcasting — the $3.5 billion purchase of American Broadcasting Companies by Capital Cities Communications Inc.; food processing — the $5.6 billion purchase of General Foods Corporation by Philip Morris Companies, Inc.; drugs and medical supplies — the $3.7 billion purchase of American Hospital Supply Corp. by Baxter Travenol Laboratories, Inc.; and aerospace — the $5 billion purchase of Hughes Aircraft Company by General Motors Corporation.

Grimm says its statistics include three "historical record breakers" among the 1985 billion-dollar deals: General Electric Company's $5.97 billion acquisition of RCA Corporation will be the largest non-oil acquisition in U.S. corporate history; the $5.36 billion buyout of Beatrice Companies, Inc. by Kohlberg Kravis Roberts & Co. will be the largest going-private transaction ever done; and Allied-Signal Inc.'s $1.7 billion divestiture of Union Texas Petroleum to a group led by Union's management and KKR is the largest unit-management buyout.

The following chart sets forth some of Grimm's findings (dollars in billions):

	1985	1984	Change
Deals completed or pending	3,001	2,543	+18%
Dollar value paid or to be paid	$179.6	$122.2	+47%
Deals over $1 billion	36	18	+100%
Dollar value of billion-dollar deals	$92.7	$58.1	+60%
Deals over $100 million	267	200	+34%
Divestitures	1,218	900	+35%
Acquisitions of public companies	336	211	+59%
Acquisitions by foreign buyers	197	151	+30%
Going-private transactions	76	57	+33%
Dollar value of going-private transactions	$24.1	$10.8	+123%
Average price/earnings ratio paid	18.0	17.2	+4.7%
Average premium for public companies	37.1%	37.9%	-2.2%

April 1986